



Comptroller General
of the United States

Washington, D.C. 20548

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J261110

Decision

Matter of: Composix Co.
File: B-257551
Date: October 17, 1994

Lawrence J. Dickson for the protester.
Richard A. Couch, Esq., and Jeffrey I. Kessler, Esq.,
Department of the Army, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest that solicitation failed to adequately notify
offerors that agency intended to award on the basis of
initial proposals is denied where solicitation incorporated
by reference the Federal Acquisition Regulation (FAR) clause
which so stated; agency was not required by FAR or otherwise
to include full text of that clause in the solicitation.

DECISION

Composix Co. protests the proposed award of a contract to
Sioux Manufacturing Corporation under request for proposals
(RFP) No. DAAE07-93-R-A110, issued by the U.S. Army Materiel
Command for spall liner kits. The protester contends that
the award to Sioux on the basis of its initial proposal
would be improper because the RFP did not include a
statement that the agency intended to award the contract
without discussions. Composix points out that agencies may
make award on the basis of initial proposals only where the
solicitation includes "a statement that proposals are
intended to be evaluated, and award made, without
discussions, unless discussions are determined to be
necessary." See 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. V
1993). While the protester concedes that the RFP
incorporated by reference the Federal Acquisition Regulation
(FAR) provision stating that the agency intended to award a
contract without discussions, it contends that incorporating
that provision by reference does not satisfy 10 U.S.C.
§ 2305(b)(4)(A)(ii), which requires that an actual
"statement" be included in full text.

We deny the protest.

The RFP, issued as a small business set-aside, provided that "this solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available." One of the provisions incorporated by reference was CONTRACT AWARD-ALTERNATE III, FAR § 52.215-16, Alt. III (Aug. 1991), which provided as follows:

"(c) The Government intends to evaluate proposals and award a contract without discussions with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary."

After receipt and review of proposals, including those from Composix and the awardee, the agency advised Composix that Sioux was the apparent successful offeror, and that the agency would not consider proposal revisions. This protest followed.

Composix contends that the award, without discussions is improper because the solicitation did not comply with the statutory requirement that it contain an actual statement that award would be made without discussions.¹ The protester alleges that it was misled by the agency's failure to include such a statement in the RFP, in that it reasonably expected that discussions would be held, and therefore did not include its best terms in its initial proposal. In this regard, Composix explains that it has learned that "it is not prudent to try to get "best" pricing from material suppliers [at the time initial proposals are submitted] if there will be a best and final offer." According to the protester, had it understood that award would be based on initial proposals, it could have "aggressively leveraged our suppliers," in order to obtain their "best" prices and it may have been the low offeror.

We have held that the incorporation by reference of material solicitation provisions is sufficient to put offerors on notice of their contents. See Forbes Mfg. Inc., B-237806, Mar. 12, 1990, 90-1 CPD ¶ 267; Tiernay Mfg. Co., B-209035, Dec. 20, 1982, 82-2 CPD ¶ 552. Moreover, offerors are expected to read the entire solicitation and to do so in a

¹Composix has not challenged the evaluation of either its own or the awardee's proposal, or otherwise questioned the reasonableness of the selection decision.

reasonable manner. Jedco, B-223579, Aug. 26, 1986, 36-2 CPD ¶ 228.

Here, we find that the incorporation of FAR § 52.215-16, Alt. III was sufficient to put offerors on notice that the agency intended to award the contract without discussions such that the contract could properly be awarded on the basis of initial proposals. See Tiernay Mfg. Co., supra. In our view, to the extent that Composix failed to properly understand the solicitation, that misunderstanding resulted not from a defect in the solicitation but from a lack of reasonable diligence on the part of the protester to read the terms of the solicitation.² While the protester argues that incorporation by reference is insufficient because the statute requires a "statement," we have no basis to conclude that agencies are precluded from incorporating such a "statement" by reference into a solicitation in lieu of reproducing the full text. Solicitations typically incorporate dozens of material provisions by reference, and, as here, include the agency's offer to provide them in full text to offerors upon request. In this case, the FAR specifically authorizes incorporation by reference of the clause at issue here, including all possible alternates. FAR § 52.301.³ Accordingly, we think the solicitation was consistent with the statutory provision at issue here and

²While Composix apparently submitted its proposal with the assumption that the standard clause was in effect, we point out that even the standard clause cautions offerors that "[t]he Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint." See FAR § 52.215-16.

³The protester asserts that our Office has previously found that incorporation by reference of this same provision violated the FAR requirement that deviation provisions be set forth in full text. BDM Int'l, Inc., 71 Comp. Gen. 363 (1992), 92-1 CPD ¶ 377. In that case, the clause was an authorized deviation from the FAR clause; deviation provisions are to be set forth in full text. Here, however, the same clause is no longer considered a deviation; rather, it is a FAR "alternate" which may be incorporated by reference.

sufficiently advised offerors of the agency's intent. We therefore have no basis to disturb the agency's proposed selection.

The protest is denied.

for Ronald Berger
Robert P. Murphy
Acting General Counsel